IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

CIVIL REVISION APPLICATION NO. 384 OF 2003.

Majidkhan Imdadkhan Pathan..... .... Petitioner.

V/s

Mr.Rakesh Shadilal Gupta & Anr..... ... Respondents.

Shri P. N. Joshi for the petitioner.

Shri Nitin Deshpande for respondents 1 and 2.

CORAM: R.M.S. KHANDEPARKAR, J.

9-12-2004

ORAL JUDGMENT:

Rule. By consent Rule made returnable forthwith.

2. Heard the learned advocates for the parties. The petitioner has challenged the order dated 3.4.2003 passed by the Competent Authority at Pune dismissing the application filed by the petitioner under Order VII Rule 11. The contention of the petitioner is that the plaint as filed by the respondents is not maintainable as it does not disclose cause of action, neither the relief claimed has been valued nor the Court-fee has been paid. It is sought to be contended on behalf of the respondents that the Competent Authority has rightly observed that the proceedings being before the Competent

Authority the provisions regarding requirement of payment of ad-valorem court-fee are not attracted and therefore there is no substance in the contention of the petitioner that the plaint is liable to be rejected on the ground of non-disclosure of valuation and non-payment of court-fee. As regards the absence of cause of action it is sought to be contended that there is clear averment in the plaint which discloses cause of action for filing the proceedings.

3. As regards the grievance of the petitioner about the absence of cause of action as rightly submitted by the learned advocate for the respondents the averment in the plaint clearly reveal that the cause of action for filing proceedings is refusal to comply with the notice issued by respondent to the petitioner to deliver the vacant and peaceful possession of the premises on termination of the licence to the petitioner to occupy the premises. Obviously therefore no fault can be found with the rejection of the application in relation to the grievance of the petitioner about non-disclosure of cause of action in view of the fact that the plaint clearly discloses cause of action for filing of the proceedings and therefore the application under Order VII Rule 11 (a) was not maintainable.

4. As regards the grievance relating to non-disclosure of valuation of payment of court-fee, undisputedly the Competent Authority is a Court within the meaning of the said expression under the relevant law and therefore the provisions of the Suit Valuation Act as well as Court-fees Act are applicable to the proceedings in question and therefore it was necessary for the respondents to disclose valuation of the relief asked for and to

pay appropriate court-fee thereon. The learned advocate for the respondents has fairly submitted that the respondents crave leave to amend the plaint in that regard and to pay the court-fee within a period of six weeks if time in that regard is granted to the respondents.

5. Considering the submissions made on behalf of the respondents that the respondents are willing and ready to amend the plaint disclosing the valuation of the relief asked for and to pay court-fee in accordance with the provisions of law, it is not necessary to reject the plaint and it will be in the fitness of the case to grant time to the respondents to amend the plaint.

6. In the result, therefore, petition partly succeeds. The impugned order as far as it holds that the provisions of Suit Valuation and/or Court-fees Act are not attracted in case of proceedings before the Competent Authority is hereby quashed and set aside and the respondents are granted time of six weeks to amend the plaint disclosing valuation of relief asked for and pay appropriate court-fees thereon. As far as rejection of the application under Order VII Rule 11(a) is concerned, no interference is called for. Rule is made absolutely in above terms with no order as to costs.